Lancaster Typographical Union No. 70, Printing, Publishing and Media Workers Sector, Communications Workers of America, 14817 *and* C.J.S. Lancaster[1] and Graphic Communications International Union, Local 160–M. Case 4–CD–955

March 13, 1998

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS FOX AND LIEBMAN

The charge in this Section 10(k) proceeding was filed on April 8, 1997,[2] by the Employer, C.J.S. Lancaster, alleging that the Respondent, Lancaster Typographical Union No. 70, Printing, Publishing and Media Workers Sector, Communications Workers of America, 14817 (Local 70), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees represented by Local 70 rather than to employees represented by Graphic Communications International Union, Local 160–M (GCIU Local 160). The hearing was held on June 20 before Hearing Officer Allene McNair-Johnson.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer is a Pennsylvania corporation engaged in the printing of medical and scientific publications at its main facility located at 3575 Hempland Road, Lancaster, Pennsylvania. The parties stipulated that during the 12-month period preceding the hearing, the Employer received gross revenues in excess of $500,000, and purchased and received materials and supplies valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Further, the parties stipulated, and we find, that Local 70 and GCIU Local 160 are labor organizations within the meaning of Section 2(5) of the Act.

[1] The name of the Employer appears as amended at the hearing.

[2] All dates are in 1997, unless stated otherwise.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer prints academic, medical, technical and scientific journals, and publishes reprints of journal articles when requested by authors, readers, or publishers. The Employer planned to install a new piece of equipment, a Xerox Docutech Model 135 machine, at the Lancaster facility to print black and white reprints.[3] The Docutech is an electronic duplicating system. It is operated by an employee who inputs or scans documents into a computer connected to the Docutech. The employee then edits, corrects, modifies, or alters the document and electronically transmits the image to the Docutech for printing. The Docutech prints a clearer quality reprint in a shorter time period and at a lower cost than those produced under conventional printing techniques.

Under a 1974 tripartite jurisdictional agreement between the Employer and both Unions, Local 70 has exclusive jurisdiction over all prepress work including artwork, paste make-up, reproduction proofs, camera work, contacting work, and opaquing negatives; and GCIU Local 160 has exclusive jurisdiction over all presses and platemaking.[4] Under an amended tripartite agreement, employees represented by both Unions share jurisdiction over one piece of equipment.[5]

In early March, the Employer awarded the operation of the Docutech to the employees represented by Local 70.[6] On or about March 10, GCIU Local 160 filed a grievance contending that the Docutech was a printing system that fell within its jurisdiction.[7] On March 13, Local 70 President Ronald LeFever sent a letter to C.J.S. Lancaster Vice President/General Manager Dorothy Wells contending that Local 70 had jurisdiction over the Docutech system and that it would ''take such action as necessary including but not limited to refusing to perform certain tasks . . . on certain work if jurisdiction over the Docutech is awarded to Local

[3] Colored reprints are not printed on the Docutech machine.

[4] The Employer has had separate collective-bargaining agreements with both Unions since the 1940s. A third union, Graphic Communications International Union, Local 138-B, which represents the bindery employees, is not involved in the instant dispute.

[5] On December 13, 1983, the tripartite agreement was amended to give Local 70 jurisdiction over the front end of the Opti-copy Imposer camera (including camera work, corrections, and mark-up of articles), and GCIU Local 160 has jurisdiction over the platemaking portion of the Opti-copy.

[6] The Employer and Local 70 entered into a supplemental agreement dated March 5, in which the Employer granted exclusive jurisdiction over the Docutech equipment to employees represented by Local 70. The supplemental agreement also stated that if the Employer installed a Computer-to-Plate unit, Local 70 would not contest awarding the operation of the platemaking equipment to employees represented by GCIU Local 160.

[7] The Employer and GCIU Local 160 held at least one grievance meeting, but the grievance was not settled.

160-M.'' The Employer filed a 8(b)(4)(D) charge on April 8. The Docutech was installed on April 22.

B. *Work in Dispute*

The disputed work involves the operation of the Xerox Docutech Model 135 at the Employer's facility in Lancaster, Pennsylvania.

C. *Contentions of the Parties*

The Employer contends that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated on the basis that Local 70's letter contained a threat to disrupt the Employer's production if the disputed work were reassigned. The Employer further contends that the disputed work should be awarded to employees represented by Local 70 based on the following: (1) Local 70 has jurisdiction over all prepress work as stated in the collective-bargaining and tripartite agreements; (2) the Employer prefers to continue assigning the disputed work to employees represented by Local 70; (3) the skills utilized to operate the Docutech are skills historically possessed by employees represented by Local 70, and two employees represented by Local 70 are trained to operate the Docutech; and (4) the Employer's labor costs would double if the Docutech was awarded to GCIU Local 160-represented employees because the Employer would have to assign two employees (an employee represented by Local 70 and an employee represented by GCIU Local 160) to operate the Docutech.

Similarly, Local 70 contends that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated based on its letter threatening economic reprisals. Local 70 also claims that the disputed work should be assigned to employees it represents based on the collective-bargaining agreement, employer preference and past practice, the specialized skills of Local 70-represented employees, and economy and efficiency of operations. Local 70 claims that it is more economical and efficient to assign the disputed work to employees it represents because they already have been trained to operate the Docutech.

GCIU Local 160 denies the existence of a jurisdictional work dispute and moves to quash the notice of hearing in this proceeding on the basis that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated. GCIU Local 160 contends that Local 70 never threatened a strike, and that Local 70's letter was vague and deliberately crafted to invoke the Board's jurisdiction and obtain a 10(k) determination of dispute. In arguing that the threat was not genuine, GCIU Local 160 relies in part on the existence of a no-strike clause in the parties' collective-bargaining agreement. GCIU Local 160 also contends that the timing of Local 70's letter and the filing of the 8(b)(4)(D) charge suggests ''team work between Local 70 and the Company,'' and further demonstrates that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated.

In the event the Board finds that a jurisdictional dispute exists, GCIU Local 160 asserts that the Board should award the disputed work to employees represented by GCIU Local 160 based on its collective-bargaining agreement, the relative skills of the employees it represents, and the fact that it is more economical to assign the disputed work to employees represented by GCIU Local 160 because they are paid less than employees represented by Local 70. GCIU Local 160 further maintains that the assignment of the work to employees represented by Local 70 would lead to the loss of jobs by employees represented by GCIU Local 160.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This requires a finding that there is reasonable cause to believe that a party has used proscribed means to enforce its claim and that there are competing claims to disputed work between rival groups of employees.

As set forth above, after the Employer awarded the operation of the Docutech to employees represented by Local 70, GCIU Local 160 filed a grievance protesting the assignment. Subsequently, as a result of that grievance, Local 70 President LeFever wrote a letter to Lancaster Vice President/General Manager Wells stating that Local 70 would refuse to perform certain tasks if jurisdiction over the Docutech was awarded to GCIU Local 160. Based on this evidence, we conclude that there are active competing claims to the disputed work between rival groups of employees, and that Local 70 has used proscribed means to enforce its claim.

GCIU Local 160 moved to quash the notice of hearing, contending that there is no reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. GCIU Local 160 argues that the alleged threat of economic action was not genuine and was deliberately crafted in equivocal language to invoke the Board's jurisdiction while at the same time avoiding the need ''to actually place its entire membership jobs on the line.'' GCIU Local 160 further maintains that LeFever's letter is vague and does not, on its face, constitute a threat to strike. GCIU Local 160 also claims that the timing of Local 70's letter and the filing of the 8(b)(4)(D) charge suggests ''team work between Local 70 and the Company.''

We cannot agree with GCIU Local 160's contention that Local 70's threat was not genuine. We see nothing vague about this threat. It is well established that as long as a Union's statement, on its face, constitutes a

threat to take proscribed action, the Board will find reasonable cause to believe that the statute has been violated, in the absence of affirmative evidence that the threat was a sham or was the product of collusion. *Teamsters Local 6 (Anheuser-Busch)*, 270 NLRB 219, 220 (1984). Local 70's statement, on its face, while not using the word ''strike,'' clearly constitutes a threat to refuse to perform services, conduct specifically proscribed by Section 8(b)(4)(D).[8] We further find, contrary to GCIU Local 160's contention, that there is no evidence that LeFever was not serious in making the threat[9] or had in any way colluded with the Employer in this matter.

We also reject GCIU Local 160's contention that the threat was not genuine because there is a no-strike, no slowdown clause in Local 70's collective-bargaining agreement. The existence of a no-strike clause in a union's collective-bargaining agreement does not provide a basis for a finding that a threat by that union is a sham. See *Teamsters Local 6 (Anheuser-Busch)*, supra at 220. For these reasons we find reasonable cause to believe that Section 8(b)(4)(D) has been violated.

The parties stipulated that there exists no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination and we deny GCIU Local 160's motion to quash the notice of hearing.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no Board certification involving the work in dispute.

The Employer and both Unions have had separate collective-bargaining agreements with the Employer since the 1940s. These agreements do not mention the Docutech. Since 1974, the Employer and both Unions also have been parties to a tripartite jurisdictional agreement which specifies that Local 70 has jurisdiction over all prepress work (including scanning, camera work, and alterations), and that GCIU Local 160 has jurisdiction over all platemaking and presses. The functions of the Docutech, however, blur the jurisdictional line drawn by the 1974 tripartite agreement. On March 5, the Employer and Local 70 signed a supplemental agreement that assigned the operation of the Docutech to employees represented by Local 70.

Based on the supplemental agreement between the Employer and Local 70, we conclude that the factor of collective-bargaining agreements favors awarding the work in dispute to employees represented by Local 70.

2. Employer preference

The Employer prefers that the disputed work be assigned to employees represented by Local 70. Accordingly, we find that this factor favors an award of the disputed work to employees represented by Local 70.

3. Area practice

The evidence of area practice is inconclusive. At one Pennsylvania plant, Wickersham Printing Company, where the GCIU is the only union at the facility, the operation of the Docutech has been awarded to employees represented by the GCIU. At another Pennsylvania plant, Mack Printing Company, where the CWA is the only union at the facility, the operation of the Docutech has been awarded to employees represented by CWA. We find that this factor does not favor an award of the disputed work to employees represented by either union.

4. Relative skills

The evidence shows that the skills needed to operate the Docutech are akin to the skills employees represented by Local 70 utilize in their prepress work on a daily basis. The evidence also shows that the employees represented by Local 70 completed a 6-week training program and possess the specialized skills needed to operate the Docutech. Employees represented by GCIU Local 160, however, have not been trained to operate the Docutech.[10] Accordingly, we find that this factor favors awarding the work in dispute to employees represented by Local 70.

[8] In support of its motion to quash the notice of hearing, GCIU Local 160 relies on the fact that LeFever never made any oral statement to support his letter, nor does the letter indicate that the Union would strike or even take a vote for strike authorization. We find this insufficient to warrant a finding that the threat was a sham.

[9] The alleged threat was preceded by a statement that ''[f]or our Local Union, jurisdiction over the Docutech is a matter of survival.''

[10] Although GCIU Local 160 claims that one of the employees it represents is qualified to work on the Docutech machine, the record shows that the employee in question was formerly a Local 70-represented employee who became a GCIU 160-represented employee when he changed jobs.

5. Economy and efficiency of operations

At the present time, the Docutech is operated by one Local 70-represented employee. The evidence shows that if the disputed work were reassigned to employees represented by GCIU Local 160, two employees would be needed to operate the machine because the Employer would still have to use one Local 70-represented employee to perform the prepress work.[11] Further, employees represented by GCIU Local 160 are not trained to operate the Docutech machine, and employees represented by Local 70 are already trained to operate the Docutech.

GCIU Local 160 argues that it is more economical to use employees it represents because they are paid less than employees represented by Local 170. The Board does not consider wage differentials as a basis for awarding disputed work. *Longshoremen ILA Local 1242 (Rail Distribution Center)*, 310 NLRB 1, 5 fn. 4 (1993). We therefore do not rely on this argument in evaluating this factor.

On the basis of the foregoing evidence, without reference to wage rate differentials, we find that this factor favors awarding the disputed work to employees represented by Local 70.

6. Loss of jobs

GCIU Local 160 argues that the assignment of the work to employees represented by Local 70 would lead to a loss of jobs by employees represented by GCIU Local 160. GCIU Local 160 relies on the Employer's denial of its request for an assurance that employees it represents would not lose work as a result of the Docutech. At the hearing the Employer's Vice President/General Manager Wells testified that as a result of the Docutech the production process will change and will eliminate the need for some of the sheet fed press work performed by GCIU Local 160-represented employees. Wells further stated, however, that at this time no layoffs were planned. In addition, Wells testified that had the Docutech work not been assigned to employees represented by Local 70, a Local 70-represented position would have been eliminated.

Under these circumstances, this factor does not favor an award of the disputed work to either group of employees.

[11] GCIU Local 160 Vice President Evans so testified.

CONCLUSION

After considering all the relevant factors, we conclude that employees represented by Lancaster Typographical Union No. 70, Printing, Publishing and Media Sector, Communications Workers of America, 14817 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of the collective-bargaining agreements; the Employer's preference; the relative skills of the employees; and the economy and efficiency of operations. In making this determination, we are awarding the work in dispute to the employees represented by Local 70, and not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of C.J.S. Lancaster represented by Lancaster Typographical Union No. 70, Printing, Publishing and Media Sector, Communications Workers of America, 14817 are entitled to operate the Xerox Docutech Model 135 at the C.J.S. Lancaster facility.